

ORIGINAL



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AZ CORP COMMISSION
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November 2, 2005

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Assistant Director
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Utilities Division
1200 W. Washington Street
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Dwight D. Nodes
Assistant Chief Administrative Law Judge
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Marlin Scott, Jr.
Utilities Engineer
Arizona Corporation Commission
Utilities Division
1200 W. Washington St.
Phoenix, AZ 85007

RE: Docket No. W-03514A-05-0729 Payson Water Co. at Geronimo Estates

Dear Commissioners and Staff:

Your interest in solving the water issues at the Payson Water Co. Geronimo system is appreciated. As a supplement to the letter sent to you dated October 4, 2005, we are providing you with more data to help you with the documentation and current status requests of Marlin Scott, Jr. Attached are the following documents and explanations:

- The signed copy of the Water Facilities Extension Agreement dated May 1, 1989 between Elusive Acres ("us") and Rich Williamson of United Utilities, the predecessor firm to Brooke Utilities-Payson Water Co Division.
- The signed copy of the Approval of Construction dated July 5, 1989 issued by ADEQ to United Utilities.
- A letter to United Utilities from the Arizona Corporation Commission dated August 18, 1989 approving the above Main Extension Agreement.

At the time of signing the Main Extension Agreement, we objected somewhat to the wording in Paragraph 1 related to the "extension" being a "continuation of its present facilities" of United Utilities, when in fact the intent was to "continue to serve" the customers of Elusive Acres with the water system we had almost completely installed. It was explained to us that this Agreement was a standard form and it needed to be signed, thus we did so fully expecting the lot owners to be served by the groundwater well and infrastructure we were providing to United Utilities.

To fully explain what occurred in the past and what the status is as of today, we will detail comments related to the Main Extension Agreement paragraph by paragraph:

1. United Utilities ("Company") did not construct any of the system described herein. All of the construction activities and materials were provided by us and our sub-contractors. We did most of the work ourselves, paid for all materials ourselves (including the well drilling), bought or rented all equipment ourselves, and managed the entire construction project ourselves. We handed United Utilities a completed system. However, after we had to leave for Ohio for family emergencies (see prior letter), the Company did construct (unknown to us for some time) an inter-connection between our system and the Geronimo system. In retrospect, it appears their intent was to not extend service to Elusive acres, but to capture a "new" water supply for the water-starved Geronimo subdivision.
2. The Customer ("us") did not pay the \$23,169.92 to the Company as indicated. In lieu of that payment, we were asked to complete the project (approximate \$150,000 total expenses) at our cost and to turn it over to them when completed, which we did. The work was done timely, correctly, and to the specifications of our design firm of Burgess and Niple, represented by Ralph Bossert, P.E. ADEQ signed off the Approval of Construction 65 days after the date of the Main Extension Agreement.
3. (a) Neither United Utilities nor Payson Water Co. has paid us any refunds under the 10%-10 year provisions of this clause. It appears that United would have been responsible for the refunds due for the period of July 1989 thru July 1996, and Payson Water would have responsibility for refunds based on water sales from August 1996 through the end of the 10 year period. We are aware some Elusive Acre hookups occurred as early as 1989, with numerous others in the mid to late 90's. In addition to the water flowing to the Elusive lots, we now know that water flowed only from our Elusive Acres well to both new and old

connections in the rest of Geronimo Estates for years (probably for the 10 years from 1992-2001) after the Company shut off the low-productivity Geronimo well in about 1992, before hooking it back up during the severe water short summer of about 2001.

(b) Because no refunds were made (see "a" above) and substantial water was diverted for years to our neighbors in the adjacent Geronimo Estates subdivision, we doubt this performance is in accordance with the provisions of ACC General Order No U-41 that the Commission agreed should be followed as part of its approval letter dated August 18, 1989. This is a severe breach of the terms of the agreement, such breach beginning within the first year of the Agreement.

(c) Since no refunds have ever been paid to us, obviously the specified \$23,169.92 limit stated in 3(a) has not been met. In fact the verbally stated understanding between the parties was the objective of us being allowed to recover the \$150,000 value of the infrastructure, which was also the amount United wanted to be allowed to recover over the 10 years from its water customers, thereby allowing the Company adequate cash flow that could be used to pay us for the specified infrastructure. We realized economic and real estate times were tough in the early 90's (Savings and Loan crisis, decreased sales of real estate, etc.).thus we expected little in those first few years, however in later years refunds should have been substantial.

(d) We believe this paragraph was intended to protect the Company from having to pay us for water sales to new meters for main extensions in other parts of the Geronimo system, under the assumption that the water would flow from Geronimo Estates "into" the new service area in Elusive Acres. However, we know that over the years the water has mainly flowed "from" Elusive Acres into the water-short Geronimo part of the interconnected system, thus all those connections (old and new) are part of the water sales for which we are due refunds under this clause.

(e) We expect that the Commission would not approve that the Company has satisfied its obligations under the extension agreement, even though substantial time has passed, being we are still within the statute of limitations related to this contract, even if it is not declared, as we expect, to be null and void.

4. Title to the assets being used (which does not include title to the land and the utility easement areas, or to the water extracted under our land) would not be of concern to us if the other terms of the Agreement had been met, however we are concerned that title never transferred since the Agreement was substantially breached by the Company.
5. The design and specifications for the project were of high quality and provided by, and paid for, by us. We have no question about the materials, the well structure, or how it was installed. The quality of the system and installation was verified by ADEQ on 7-5-89.
6. We do not know the exact nature of the transaction between United and Brooke Utilities (or Payson Water Co.) as to whether it was an asset sale or a stock purchase; therefore we assume our approval was not required by the Commission, the seller or the buyer.

7. We have never sold, assigned, or transferred our rights under this Agreement, thus all refund payments are due directly to us.
8. This agreement and all terms and conditions was accepted at its face value and approved by the ACC on August 18, 1989. It seems that if the approved terms were substantially violated by the Company, the agreement should be null and void in the eyes of the Commission.
9. Obviously, many of the above activities should be deemed violations of the "Rules and Regulations Relating to the Operation of Domestic Water Utility Companies" as required under this clause.

The above clauses directly dealt with the issues of compensation for the infrastructure we supplied to United Utilities. We need further legal advice in terms of Arizona real estate and water law in terms of (a) the sale or lease of our lands on which the well, storage system, and piping is located, and (b) compensation related to the value of the water that has been removed from our land over the years. As indicated in Paragraph 1 of the Main Extension Agreement, we did not intend to sell the land or the water beneath it as part of this agreement, expecting to settle on that once we knew more related to the pumping capacity and reliability tests of the well.

Brooke Utilities has avoided us and rudely hung up on us on numerous occasions when we have called to discuss this matter, irritating us enough over the years that we did not pursue matters as early as possible. However, recently, we have received phone calls from several unhappy lot owners who are unable to receive water service we and the State of Arizona Real Estate Department documented was available to them years ago under Final Subdivision Public Report dated 10-28-88 under reference No. 25,091. As soon as possible, we want the situation rectified for our friends, our neighbors, our customers, and for those recent buyers who have been thoroughly miss-led over the last few months. If we can be made somewhat whole in this situation, we would be appreciative.

We will be supplying adequate copies to Docket Control to properly enter this letter into the proceedings. Please let us know what we need to do to bring this to a conclusion, such that we, the Company, and the ACC can minimize the cost and time of any required legal processes. We are not in such dire financial straits or as young and overly trusting (25 years old) as we were when we took on this project 18 years ago.

Thanks for your assistance in this matter and for you having Marlin Scott travel to the location to correct some of the miss-information about the well capacities and the system operations.

Sincerely,

Mark Boroski

Mark Boroski 11/3/05

Judy Boroski

Judy Boroski 11/03/05

WATER FACILITIES EXTENSION AGREEMENT

No. 3

THIS AGREEMENT, made and entered into this 1st day of May, 1989 by and between UNITED UTILITIES, an Arizona corporation (hereinafter called the "Company"), and (ELUSIVE ACRES) Mr. Mark Boroski, Developer mailing address P. O. Box 1465, Payson, AZ. 85547 (hereinafter called the "Customer"), WITNESSETH:

In consideration of the services to be performed by the Company and the sums of money to be advanced by the Customer, it is agreed as follows:

1. The Company will construct an extension to its Geronimo water distribution facilities as a continuation of its present facilities as follows:

3,000 Liner Ft. of 3" PVC, 560 Liner Ft. of 2" PVC \$3,680.78, Pump Houses and Pumps \$3,578.62, Storage Tank (15,000) gallons \$11,493.79, 1" PVC and Misc. Hardware \$1,542.57, Well drilling and Development \$2,874.16.

2. The Customer will pay to the Company upon signing this Agreement the total sum of Twenty-three thousand One-hundred Sixty-nine (\$ 23,169.92), receipt of which is hereby acknowledged by the Company, which represents:

- (a) \$ 3,680.78 refundable advances in aid of construction for 3,560 feet of 2", 3", X inch distribution main, as described above in paragraph 1.
 - (b) \$ 19,489.14 refundable advance in aid of construction for: Well Development, Storage Tank, Pump Houses and Pump, Service Lines and Misc. Hdw.
3. (a) The Company agrees to refund to the Customer 10% of the total annual gross revenue from water sales to each new bona fide customer in a new subdivision, tract, development or project, or located on a single parcel or lot for a period of 10 years, provided that in any event if all refundable advances made pursuant to this contract have not been refunded prior to the end of the 10 year period, then in such event the balance of the advances made hereunder shall be non-refundable in accordance with Arizona Corporation Commission General Order No. U-41.
- (b) The refund period is to begin on either the first day of July or the first day of January next following the contract date; and refunds shall be made by the Company on or before the 31st day of August of each calendar year covering any refunds owing from water revenues received during the preceding July 1st to June 30th period.
- (c) The aggregate refunds made hereunder shall in no event exceed the total of the advance in aid of construction made pursuant to this Agreement; it is further understood that no interest will be paid by the Company on advances received under this Agreement.
- (d) The Company shall make no refunds from any revenue received from any lines, other than the customer service line, leading up to or taking off from the particular main or line extension as described above by this Agreement, whether the same have been previously installed or may be installed in the future.
- (e) The Company may upon approval by the Commission, terminate its obligation to refund a percentage of gross revenue from the line extension as described above by accord and satisfaction of its obligations under this extension Agreement.

4. All pipe lines, valves, fittings, wells, meters, tanks or other facilities installed under this Agreement shall be the sole property of the Company, and the person making advances in aid of construction, whether refundable or not, shall have no right, title or interest in any such facilities.

5. The size, design, type and quality of materials and of the system, location in the ground and the manner of installation, shall be specified by the Company and shall accord with requirements of the Commission or other public agencies having authority therein.

6. This Agreement shall be binding upon and for the benefit of the heirs, administrators, executors, successors and assigns of the parties signing this Agreement; provided, however, that no assignment or other transfer of this contract by Customer shall be binding upon the Company or create any rights in the Assignee until such assignment or other transfer is approved and accepted in writing by the Company.

7. All payments of any refunds due Customer hereunder shall be payable to Customer signing this Agreement until such time as this Agreement has been assigned or transferred by Customer in writing and such assignment or transfer has been accepted and approved by the Company.

8. Before this Agreement shall become effective and binding upon either the Company or the Customer, it shall be filed with and approved by the Utilities Division of the Arizona Corporation Commission, and in the event it is not so approved, this Agreement shall be null and void and of no force or effect whatever.

9. This Agreement, and all rights and obligations hereunder, and in regard to water service to Customer shall be subject to the Arizona Corporation Commission's "Rules and Regulations Relating to the Operation of Domestic Water Utility Companies".

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

UNITED UTILITIES

By [Signature]

CUSTOMER Mark A. Boroski March 13, 1989

By _____

(SEAL)

ATTEST _____

STATE OF ARIZONA)
County) ss.

This instrument was acknowledged before me this 18th day of May, 1989,
by Richard Williamson

(SEAL)

ATTEST _____

STATE OF ARIZONA)
Pima County) ss.

This instrument was acknowledged before me this 13 day of March, 1989,
By Mark A. Boroski

My Commission Expires Sept. 19, 1992.

Rosemarie Husted

Notary Public

Expiration Date: 6/18/91

William L. Kipper
Notary Public

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF WATER QUALITY
2005 North Central Avenue ■ Phoenix, AZ 85004

APPROVAL OF CONSTRUCTION

Project Description Well, 15,000 gal storage tank, duplex booster system,
2670 L.F. of 3" PVC waterline and 660 L ft, 2" PVC waterline

Location NES 47, SEC 20, T11½N, R10E Gila County

Project Owner United Utilities, Drawer 559, Payson, Arizona 85541

Approval to operate the above-described facilities as represented in the approved plan documents on file with the Arizona Department of Environmental Quality is hereby given subject to the following provisions:

This Approval is based on the Engineer's Certificate of Completion submitted by Ralph O. Bossert, P.E., Certificate No. 12248, dated December 6, 1988.

The State law, A.R.S. 49-104., B.10, requires that the operation of the project must be in accordance with the rules and regulations of the Arizona Department of Environmental Quality

Date Approved: 07/05/89
RAH/LW/CJT

Robert A. Hollander

System Number 04-028

Robert A. Hollander, P.E., Manager
Central Regional Office
Office of Water Quality

cc: File No. 880130
OWQ Technical Review Unit
County Health Department - Gila

Ralph O. Bossert, Burgess & Nipple, Inc., 1106 N. Beeline Hwy, Payson,
Arizona

United Utilities

ADEQ/OWQ-140 (Rev. 7-87)
Arizona Corporation Commission
Planning and Zoning

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8-21-89

JAMES MATTHEWS
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

August 18, 1989

Unitied Utilities
P.O. Box Drawer 559
Payson, Arizona 85547

Dear Sirs:

The enclosed Main Extension Agreement between United Utilities (Geronimo Estates) and Elusive Acres (Mr. Mark Boroski) has met the provisions of A.A.C. R14-2-406 and is approved, excepting those provisions, if any, not within the jurisdiction of the Commission.

A copy of the Agreement will remain on file in the Utilities Division.

Sincerely,

A handwritten signature in ink, appearing to read "Steve J. Donn".

Steve J. Donn
Consumer Service Specialist
Utilities Division

SJD:ldh

Enclosures

PWFORM